

**For discussion on  
26 February 2015**

**Bills Committee on District Cooling Services Bill**

**Proposed Committee Stage Amendments**

This paper sets out the Committee Stage Amendments (“CSAs”) proposed by the Administration to the District Cooling Services Bill (“the Bill”).

2. In preparing the proposed CSAs, the Administration has taken into account the views of Members and the Assistant Legal Adviser of the Legislative Council (“LegCo”), as well as some drafting refinements.
3. The proposed CSAs are tabulated at **Annex A**, and a marked-up copy of the Bill showing the proposed amendments is at **Annex B** for easy reference.

Item	Relevant Matter / Provision	Proposed Committee Stage Amendment	Remarks
1.	Clause 2 Interpretation	<p><i>(i) Add a definition of <b>agreed starting date</b> as follows:</i></p> <p><i>“<b>agreed starting date</b> (協定開始日期), in relation to a building for which a person is an approved consumer, means the intended starting date for the provision of district cooling services to the building as agreed by the Director under section 4(4)(b)(ii) when approving the person as the consumer under section 4(4);”</i></p>	<p>The CSA seeks to introduce a label “agreed starting date” for ease of reference in clauses 4, 5 and 6.</p>
		<p><i>(ii) Amend the definition of <b>approved consumer</b> as follows:</i></p> <p><i>“<b>approved consumer</b> (獲准用戶), in relation to a building, means a person who is approved under section 4(4) as the consumer of district cooling services for the building;”</i></p>	<p>The CSA seeks to achieve consistency in the section reference to the provision about approval of consumer.</p>

Item	Relevant Matter / Provision	Proposed Committee Stage Amendment	Remarks
		<p>(iii) Amend the definition of <i>estimated maximum cooling capacity</i> as follows:</p> <p><i>“estimated maximum cooling capacity</i> (估計最高製冷量), in relation to a building to which district cooling services are <u>intended</u> to be provided by a district cooling system, means an estimation of the maximum rate of heat removal, in the unit of kilowatt refrigeration (kWr), that would be demanded by the building for the system to generate the chilled water to be supplied to the building for the services;”</p>	<p>The CSA is proposed in response to the LegCo Assistant Legal Adviser’s concerns on the consistency between the English and Chinese versions of the definition in the Bill.</p>
2.	<p>Clause 4(2)(b) Approval of consumer of district cooling services</p>	<p>Amend the clause as follows:</p> <p>“the intended starting date for <u>the provision of</u> district cooling services <del>to be provided</del> to the building; and”</p>	<p>The CSA seeks to improve the presentation of the clause.</p>

Item	Relevant Matter / Provision	Proposed Committee Stage Amendment	Remarks
3.	Clause 4 Approval of consumer of district cooling services	<p><i>Add a sub-clause as follows:</i></p> <p>“(4A) If the Director approves the applicant as the consumer of district cooling services for a building under subsection (4), the applicant becomes, or is taken to have become, the approved consumer for the building on the agreed starting date.”</p>	The CSA seeks to make it clear when a person approved under section 4(4) would become the consumer of district cooling services for the building, and is consequential to the introduction of the label “agreed starting date”.
4.	Clause 5(1) Contract cooling capacity	<p><i>Amend the clause as follows:</i></p> <p>“<u>If the Director approves a person as</u> <del>On the approval of</del> the consumer of district cooling services for a building under section 4(4), the estimated maximum cooling capacity agreed by the Director under section 4(4)(b)(i) becomes, <u>or is taken to have become,</u> the contract cooling capacity of the building <u>on the agreed starting date.</u>”</p>	The CSA is to achieve consistency with the wording of the proposed clause 4(4A), and is consequential to the introduction of the label “agreed starting date”.

Item	Relevant Matter / Provision	Proposed Committee Stage Amendment	Remarks
5.	Clause 6(1) and (1)(a) Provision of district cooling services	<p><i>Amend the clause as follows:</i></p> <p>(i) <i>Clause 6(1):</i>  “<del>After</del> <u>If the Director approves a person as</u> the consumer of district cooling services for a building <del>has been approved</del> under section 4(4), the Director may provide district cooling services to the building from—”</p> <p>(ii) <i>Clause 6(1)(a):</i>  “<del>the intended starting date agreed by the Director under section 4(4)(b)(ii) agreed starting date</del>; or”</p>	The CSAs are to achieve consistency with the wording of the proposed clause 4(4A), and are consequential to the introduction of the label “agreed starting date”.
6.	Clause 10(1) Charges for district cooling services	<p><i>Amend the clause as follows:</i></p> <p>“The approved consumer for a building <del>connected to a district cooling system specified in Schedule 1</del> must pay to the Government the following charges for the district cooling services provided to the</p>	The CSA seeks to achieve consistency with clause 10(2).

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		building during a month.”	
7.	Clause 22(1)(c) and (1)(d) Appeal to appeal board	<p><i>Amend the clause as follows:</i></p> <p>(i) <i>Clause 22(1)(c):</i> “a decision to suspend or terminate district cooling services to a building under section 7(1)(b), (c), <u>(d), (e), (f)</u> or (g);”</p> <p>(ii) <i>Clause 22(1)(d):</i> “a decision not to resume district cooling services to a building under section 8(2) where the services were suspended under section 7(1)(b), (c), <u>(d), (e), (f)</u> or (g);”</p>	The CSAs are proposed in response to the Members’ concerns that the decision to suspend or terminate district cooling services to a building under section 7(1)(d), (e) or (f), and the decision not to resume district cooling services to a building under section 8(2) where the services were suspended under section 7(1)(d), (e) or (f) should also be rendered appealable under clause 22(1).
8.	Clause 24(1)(b), (1)(c) and (2)(b) Appeal board panel	<p><i>Amend the clause as follows:</i></p> <p>(i) <i>Clause 24(1)(b):</i> “not more than 4 members, each of whom is a</p>	The proposed CSAs seek to achieve consistency with section 3(1) of The Hong Kong Institution of Engineers Ordinance (Cap. 1105).

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		<p>corporate member of <del>€</del>The Hong Kong Institution of Engineers in one or more of the electrical, mechanical and building services disciplines;”</p> <p><i>(ii) Clause 24(1)(c):</i>  “not more than 4 members, each of whom is a corporate member of <del>€</del>The Hong Kong Institution of Engineers in a discipline other than those mentioned in paragraph (b); and”</p> <p><i>(iii) Clause 24(2)(b):</i>  “if a person is a corporate member of <del>€</del>The Hong Kong Institution of Engineers in more than one discipline, the person’s membership is, for the purposes of subsections (1) and (6)(d), to be regarded as being only in the discipline designated by the Secretary for the appointment.”</p>	

Item	Relevant Matter / Provision	Proposed Committee Stage Amendment	Remarks
9.	Clause 25(2)(b) Appeal board	<p><i>Amend the clause as follows:</i></p> <p>“the remaining 4 members must be appointed from <u>all of</u> the 3 categories of members specified in section 24(1)(b), (c) and (d).”</p>	The CSA is proposed in response to Members’ views that the clause should be revised to reflect the Administration’s intent more clearly that at least one member from each of the three categories specified in clause 24(1)(b), (c) and (d) should be appointed to an appeal board.
10.	Schedule 1	<p><i>Amend the square-bracketed cross reference as follows:</i></p> <p>“[ss. 3, <del>10</del> &amp; 34]”</p>	The CSA is consequential to the CSA to clause 10(1).
11.	Schedule 2, section 1(2) Calculation of charges for district cooling services	<p><i>Amend the section as follows:</i></p> <p>“Section 5 of this Schedule sets out the following rates that are applicable to a building <u>to which district cooling services are provided by</u> <del>in</del> a</p>	The CSA seeks to improve the presentation of the section.



Item	Relevant Matter / Provision	Proposed Committee Stage Amendment	Remarks
		district cooling system referred to in that section—”	
12.	Schedule 2, section 5(1) Capacity charge rate and consumption charge rate	<i>Amend the section as follows:</i>  “For a building <del>in</del> <u>to which district cooling services are provided by</u> a district cooling system specified in column 1 of the following table.”	The CSA seeks to improve the presentation of the section.

**Environment Bureau**  
**February 2015**

# A BILL

## To

Provide for matters relating to district cooling services provided by the Government, including the imposition of charges for the services; and to provide for other related matters.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

**1. Short title**

This Ordinance may be cited as the District Cooling Services Ordinance.

**2. Interpretation**

In this Ordinance—

***actual cooling capacity*** (實際製冷量), in relation to a building to which district cooling services are provided by a district cooling system, means the rate of heat removal, in the unit of kilowatt refrigeration (kW<sub>r</sub>), that is actually demanded by the building for the system to generate the chilled water supplied to the building for the services;

***actual cooling energy consumption*** (實際耗冷量), in relation to a building to which district cooling services are provided by a district cooling system, means the cooling energy, in the unit of kilowatt-hour refrigeration (kW<sub>r</sub>h), that is actually used by

the building for the system to generate the chilled water supplied to the building for the services;

**agreed starting date** (協定開始日期), in relation to a building for which a person is an approved consumer, means the intended starting date for the provision of district cooling services to the building as agreed by the Director under section 4(4)(b)(ii) when approving the person as the consumer under section 4(4)<sup>1</sup>;

**appeal board** (上訴委員會) means a District Cooling Services Appeal Board appointed under section 25;

**appeal board panel** (上訴委員團) means the appeal board panel referred to in section 24;

**approved consumer** (獲准用戶), in relation to a building, means a person who is approved under section 4(4)<sup>2</sup> as the consumer of district cooling services for the building;

**authorized officer** (獲授權人員) means a public officer authorized under section 19;

**building** (建築物) includes part of a building;

**capacity charge** (製冷量收費) means the capacity charge referred to in section 10(1)(a);

**capacity overrun charge** (超額製冷量收費) means the capacity overrun charge referred to in section 10(1)(b);

**charge** (收費) means a primary charge, surcharge or further surcharge;

**consumption charge** (耗冷量收費) means the consumption charge referred to in section 10(1)(c);

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<sup>1</sup> Item 1(i)

<sup>2</sup> Item 1(ii)

**contract cooling capacity** (合約製冷量), in relation to a building, means the contract cooling capacity as provided or revised under section 5 for the building;

**deposit** (按金) means a deposit payable under section 13;

**Director** (署長) means the Director of Electrical and Mechanical Services;

**district cooling services** (區域供冷服務) means the supply of chilled water for air-conditioning purposes by a district cooling system owned by the Government, and other related services;

**district cooling system** (區域供冷系統) means a system in which chilled water is supplied from one or more central chiller plants to user buildings within the area served by the system through a network of pipes for air-conditioning in the buildings;

**due date** (到期日)—see section 14;

**estimated maximum cooling capacity** (估計最高製冷量), in relation to a building to which district cooling services are **intended**<sup>3</sup> to be provided by a district cooling system, means an estimation of the maximum rate of heat removal, in the unit of kilowatt refrigeration (kW<sub>r</sub>), that would be demanded by the building for the system to generate the chilled water to be supplied to the building for the services;

**fee** (費用) means the fee for testing referred to in section 12(4);

**function** (職能) includes a power and a duty;

**further surcharge** (額外附加費) means the further surcharge referred to in section 10(2)(b);

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<sup>3</sup> Item 1(iii)

*improvement notice* (敦促改善通知書) means an improvement notice issued or amended under section 18;

*primary charge* (基本收費) means a capacity charge, a capacity overrun charge or a consumption charge;

*Secretary* (局長) means the Secretary for the Environment;

*specified form* (指明表格) means a form specified by the Director under section 33;

*surcharge* (附加費) means the surcharge referred to in section 10(2)(a).

**3. District cooling system in relation to which this Ordinance applies**

This Ordinance applies in relation to a district cooling system specified in Schedule 1.

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## Part 2

### Provision of District Cooling Services

#### 4. Approval of consumer of district cooling services

- (1) Any of the following persons may apply to the Director in a specified form for approval as the consumer of district cooling services for a building—
  - (a) an owner or occupier of the building;
  - (b) a person responsible for the management of the building.
- (2) The applicant must include in the specified form—
  - (a) the estimated maximum cooling capacity of the building;
  - (b) the intended starting date for the provision of district cooling services ~~to be provided~~ to the building<sup>4</sup>; and
  - (c) an undertaking given by the applicant in accordance with subsection (3).
- (3) The undertaking to be given by the applicant under subsection (2)(c) is an undertaking—
  - (a) to pay any charge, fee or deposit payable in respect of the district cooling services provided to the building in accordance with this Ordinance;
  - (b) to be responsible for, and to bear the cost of, the design, provision, construction, installation and maintenance of the facilities for the building to receive district cooling services as specified by the Director; and

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<sup>4</sup> Item 2

- (c) to comply with any other conditions imposed by the Director relating to the provision or use of district cooling services.
- (4) The Director may approve the applicant as the consumer of district cooling services for a building if—
  - (a) the application complies with subsections (1) and (2); and
  - (b) the Director agrees to—
    - (i) the estimated maximum cooling capacity provided under subsection (2)(a) or otherwise by the applicant; and
    - (ii) the intended starting date provided under subsection (2)(b) or otherwise by the applicant.

(4A) If the Director approves the applicant as the consumer of district cooling services for a building under subsection (4), the applicant becomes, or is taken to have become, the approved consumer for the building on the agreed starting date<sup>5</sup>.

- (5) If the Director decides not to approve the applicant as the consumer of district cooling services for a building under subsection (4), the Director must notify the applicant of the decision and the reasons for the decision.

## 5. Contract cooling capacity

- (1) If the Director approves a person as ~~On the approval of~~ the consumer of district cooling services for a building under section 4(4), the estimated maximum cooling capacity agreed by the Director under section 4(4)(b)(i) becomes, or is taken

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<sup>5</sup> Item 3

to have become, the contract cooling capacity of the building on the agreed starting date<sup>6</sup>.

- (2) The approved consumer for a building may revise the contract cooling capacity of the building only if the Director has agreed to the revision.

## 6. Provision of district cooling services

- (1) After If the Director approves a person as the consumer of district cooling services for a building has been approved under section 4(4)<sup>7</sup>, the Director may provide district cooling services to the building from—
  - (a) the intended starting date agreed by the Director under section 4(4)(b)(ii) agreed starting date<sup>8</sup>; or
  - (b) a later date as proposed by the approved consumer and agreed by the Director.
- (2) Nevertheless, the Director may refuse to provide district cooling services to a building from the date specified in subsection (1) if the approved consumer for the building fails to fulfil, or is in breach of, the undertaking given by the approved consumer under section 4(2)(c) in respect of the building.
- (3) If the Director decides to refuse to provide district cooling services to a building under subsection (2), the Director must notify the approved consumer for the building of the decision and the reasons for the decision.

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<sup>6</sup> Item 4

<sup>7</sup> Item 5(i)

<sup>8</sup> Item 5(ii)



**7. Suspension or termination of district cooling services**

- (1) The Director may suspend or terminate district cooling services to a building if—
  - (a) there is no approved consumer for the building;
  - (b) the approved consumer for the building fails to fulfil, or is in breach of, the undertaking given by the approved consumer under section 4(2)(c) in respect of the building;
  - (c) the approved consumer for the building fails to comply with a direction contained in an improvement notice;
  - (d) in the Director's opinion, work is required to be carried out for the installation, inspection, testing, operation, maintenance, regulating, alteration, repair, replacement or removal of any part of the district cooling system;
  - (e) in the Director's opinion, work is required to be carried out in the event of an operational emergency arising from a fault in the district cooling system;
  - (f) in the Director's opinion, it is necessary to do so to protect life or property; or
  - (g) in the Director's opinion, the behaviour of, or an installation of the building by, the approved consumer for the building is jeopardizing or will jeopardize the operation or reliability of the district cooling services.
- (2) If the Director decides to suspend or terminate district cooling services to a building under subsection (1)(b), (c), (d), (e), (f) or (g), the Director must notify the approved consumer for the building of the decision and the reasons for the decision.

**8. Application for resumption of suspended district cooling services**

- (1) If the Director has suspended district cooling services to a building under section 7(1)(b), (c), (d), (e), (f) or (g), the approved consumer for the building may apply to the Director for the services to be resumed.
- (2) On an application under subsection (1), the Director may resume district cooling services to the building if the approved consumer demonstrates to the satisfaction of the Director that the ground on which the services were suspended no longer exists.
- (3) If the Director decides not to resume district cooling services to a building under subsection (2), the Director must notify the approved consumer for the building of the decision and the reasons for the decision.

**9. Ceasing to be approved as consumer of district cooling services**

- (1) A person who is the approved consumer for a building may apply to the Director for the cessation of the approval.
- (2) The application must—
  - (a) state the intended date of the cessation; and
  - (b) be made at least 1 month before that date.
- (3) The Director must allow the application if—
  - (a) the application complies with subsection (2); and
  - (b) all outstanding charges and fees payable by the approved consumer in respect of the district cooling services provided to the building have been settled before the intended date of the cessation.
- (4) If the Director allows the application, then, on the intended date of the cessation—

- (a) the person ceases to be approved as the consumer of district cooling services for the building; and
  - (b) the undertaking given by the person under section 4(2)(c) in respect of the building ceases to be in force.
- (5) If the Director decides to refuse the application, the Director must notify the person of the decision and the reasons for the decision.
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## Part 3

### Charges for District Cooling Services

#### 10. Charges for district cooling services

- (1) The approved consumer for a building ~~connected to a district cooling system specified in Schedule 1~~ must pay to the Government the following charges for the district cooling services provided to the building during a month<sup>9</sup>—
  - (a) a capacity charge for the month, calculated according to section 2(1) and (3) of Schedule 2;
  - (b) if the highest actual cooling capacity of the building in the month exceeds the contract cooling capacity of the building—a capacity overrun charge for the month, calculated according to section 2(2) and (3) of Schedule 2; and
  - (c) a consumption charge for the month, calculated according to section 3 of Schedule 2.
- (2) The approved consumer for a building must also pay to the Government the following charges for an outstanding charge or fee—
  - (a) if a part of a primary charge or fee payable in respect of the building is not paid on or before its due date—a surcharge for the unpaid primary charge or fee, calculated according to section 4(1) of Schedule 2; and
  - (b) if a part of a primary charge, fee or surcharge payable in respect of the building remains unpaid as at the expiry of the period of 6 months beginning on the day after its due

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<sup>9</sup> Item 6

date—a further surcharge for the unpaid primary charge, fee or surcharge, calculated according to section 4(2) of Schedule 2.

- (3) The Director must inform the approved consumer for a building, by notice in writing, of the rates of primary charge applicable to the building for each subject period.
- (4) In addition, the Director must publicize the rates of primary charge applicable for each subject period by—
  - (a) publishing a notice that is accessible through the Internet; or
  - (b) placing a notice in any daily newspaper in circulation in Hong Kong.
- (5) In this section—

*rates of primary charge* (基本收費額) means the capacity charge rate and consumption charge rate within the meaning of section 5 of Schedule 2;

*subject period* (收費計算期) has the meaning given by section 5(2) of Schedule 2.

## 11. **Determination of actual cooling capacity and actual cooling energy consumption**

- (1) The actual cooling capacity and actual cooling energy consumption of a building are to be measured by a meter owned by the Government and maintained by the Director in the building.
- (2) However, if the Director is of the opinion that it is impracticable or inappropriate to rely on a measurement under subsection (1) for a period, the actual cooling capacity and actual cooling energy consumption of the building for that period may be determined in the manner the Director thinks fit.

**12. Testing of meter**

- (1) An approved consumer for a building who doubts the accuracy of a meter that measures the actual cooling capacity and actual cooling energy consumption of the building may apply to the Director in a specified form to have the meter tested.
- (2) After receiving the application, the Director must arrange for the meter to be tested in the manner the Director thinks fit.
- (3) A meter is regarded as registering correctly despite any inaccuracy found in its measurement if the inaccuracy does not exceed 3% above or below the correct amount.
- (4) If the result of the test is that the meter is registering correctly, the approved consumer must pay to the Director a fee for testing in an amount equivalent to the cost involved in testing the meter.
- (5) However, if the result is that the meter is not registering correctly, no fee for testing is payable by the approved consumer.

**13. Deposit**

- (1) The Director may require the approved consumer for a building to pay a deposit, in the amount and by the date specified in a demand note issued to the approved consumer, to cover any charge or fee that is or may be payable in respect of the building.
- (2) Without limiting any other power under this Ordinance, the Director may apply a deposit paid in respect of a building to the payment of a charge or fee payable in respect of the building.
- (3) A deposit paid under this section—
  - (a) does not bear interest; and

- (b) is not transferable.
- (4) Subject to subsection (2), a deposit paid by a person as the approved consumer for a building must be refunded to the person if—
  - (a) the person has ceased to be approved as the consumer of district cooling services for the building; and
  - (b) the Director is of the opinion that the deposit is no longer required for satisfying any liability owed by the person as the approved consumer to the Government in connection with the services.

**14. Due date for charge, fee and deposit**

- (1) The due date for a charge or fee is—
  - (a) for a primary charge or fee—the date by which the charge or fee must be paid as specified in a demand note issued by the Director for the charge or fee;
  - (b) for a surcharge payable in respect of a primary charge or fee—the due date of the primary charge or fee; and
  - (c) for a further surcharge payable in respect of a primary charge, fee or surcharge—the date on which the period of 6 months beginning on the day after the due date of the primary charge, fee or surcharge expires.
- (2) The due date for a deposit is the date by which the deposit must be paid as specified in a demand note issued for the deposit under section 13(1).
- (3) A charge, fee or deposit must be paid—
  - (a) for a primary charge, fee or deposit—on or before the due date; or
  - (b) for a surcharge or further surcharge—immediately after the due date.

**15. Reduction etc. of charge, fee and deposit**

- (1) The Director may, in a particular case, reduce, waive or refund, in whole or in part, a charge or fee payable or paid under this Ordinance.
- (2) The Director may, on the application by the approved consumer for a building in a particular case, reduce, waive or refund, in whole or in part, a deposit payable or paid in respect of the building.

**16. Recovery of charge and fee**

A charge or fee payable under this Ordinance is recoverable as a civil debt due to the Government.

**17. Application of charge and fee received etc.**

- (1) Subject to the approval of the Financial Secretary, those parts of the charges and fees received by the Government under this Ordinance that are required for either of the purposes specified in subsection (2) do not form part of the general revenue and may be applied for those purposes.
- (2) The purposes are—
  - (a) settling a payment that a person who has entered into an agreement with the Government for the management, operation and maintenance of a district cooling system is entitled to receive under the agreement; and
  - (b) settling any other expenses arising from or in connection with the provision of district cooling services.

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## **Part 4**

### **Administration of District Cooling Services**

#### **18. Improvement notice**

- (1) The Director may issue an improvement notice to the approved consumer for a building if the Director is of the opinion that the behaviour of, or an installation of the building by, the approved consumer is jeopardizing or will jeopardize the operation or reliability of district cooling services.
- (2) An improvement notice issued to an approved consumer must—
  - (a) state the Director's opinion referred to in subsection (1);
  - (b) specify the approved consumer's behaviour or installation that is jeopardizing or will jeopardize the operation or reliability of district cooling services; and
  - (c) direct the approved consumer to remedy the behaviour or installation within the period specified in the notice.
- (3) The Director may amend or withdraw an improvement notice by issuing a notice to the approved consumer.
- (4) An improvement notice issued to a person as the approved consumer for a building ceases to have effect if the person is no longer the approved consumer for the building.
- (5) Subsection (4) applies regardless of whether the person has complied with the direction contained in the improvement notice.

#### **19. Authorized officers**

- (1) The Director may, in writing, authorize a public officer attached to the Electrical and Mechanical Services

Department to be an authorized officer for the purposes of this Ordinance.

- (2) An authorized officer must, if so requested, produce written proof of that officer's authorization before performing a function under this Ordinance.

## **20. Access for inspection and maintenance**

- (1) An authorized officer may, at all reasonable times, enter a building to do any or all of the following—
  - (a) to inspect the building for the purposes of verifying information that is needed in determining a charge payable in respect of the building;
  - (b) to install, inspect, test, operate, maintain, regulate, alter, repair, replace or remove any part of the district cooling system in the building;
  - (c) to suspend or terminate district cooling services to the building.
- (2) Subsection (1) does not empower an authorized officer to enter a part of the building that is for residential use without the consent of the occupier of that part.
- (3) An authorized officer may exercise any power under this section with the assistance of any other person the officer thinks fit.

## **21. Offences**

- (1) A person commits an offence if the person—
  - (a) obstructs an authorized officer, or a person assisting the officer under section 20(3), in the officer's performance of a function under this Ordinance; or

- (b) tampers with a facility owned and maintained by the Government for any purpose relating to the provision of district cooling services.
  - (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
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## Part 5

### Appeal

#### 22. Appeal to appeal board

- (1) A person who is aggrieved by any of the following decisions and direction made in respect of the person may appeal to an appeal board against the decision or direction—
- (a) a decision not to approve a person as the consumer of district cooling services for a building under section 4(4);
  - (b) a decision to refuse to provide district cooling services to a building under section 6(2);
  - (c) a decision to suspend or terminate district cooling services to a building under section 7(1)(b), (c), ~~(d), (e), (f)~~ or (g)<sup>10</sup>;
  - (d) a decision not to resume district cooling services to a building under section 8(2) where the services were suspended under section 7(1)(b), (c), ~~(d), (e), (f)~~ or (g)<sup>11</sup>;
  - (e) a decision to refuse an application for the cessation of the approval of a person as the consumer of district cooling services for a building under section 9;
  - (f) a decision to issue or amend an improvement notice under section 18;
  - (g) a direction contained in an improvement notice.

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<sup>10</sup> Item 7(i)

<sup>11</sup> Item 7(ii)

- (2) An appeal under subsection (1) against a decision or direction does not suspend the decision or direction unless the Director decides otherwise.

### **23. How to lodge an appeal**

- (1) A person may lodge an appeal under section 22(1) by giving a notice of appeal to the Director.
- (2) A notice of appeal must be given within—
  - (a) 14 days after the date on which the person is notified of the decision or direction appealed against; or
  - (b) a longer period that the Director may allow.
- (3) A notice of appeal must—
  - (a) be in a specified form;
  - (b) be accompanied by a copy of any document on which the person intends to rely; and
  - (c) contain the particulars of any witness that the person intends to call at the hearing of the appeal.
- (4) As soon as reasonably practicable after receiving a notice of appeal, the Director must deliver it to the Secretary.

### **24. Appeal board panel**

- (1) The Secretary is to appoint members to an appeal board panel consisting of the following numbers and categories of members—
  - (a) not more than 4 members, each of whom is—
    - (i) a barrister qualified to practise as such under the Legal Practitioners Ordinance (Cap. 159); or
    - (ii) a solicitor qualified to act as such under that Ordinance;

- (b) not more than 4 members, each of whom is a corporate member of ~~the~~The Hong Kong Institution of Engineers in one or more of the electrical, mechanical and building services disciplines<sup>12</sup>;
  - (c) not more than 4 members, each of whom is a corporate member of ~~the~~The Hong Kong Institution of Engineers in a discipline other than those mentioned in paragraph (b)<sup>13</sup>; and
  - (d) not more than 4 members, each of whom is not, in the Secretary's opinion, from the engineering profession.
- (2) For an appointment under subsection (1)(b) or (c)—
- (a) a person is ineligible if the person has less than 10 years' experience of practice in the engineering profession in Hong Kong; and
  - (b) if a person is a corporate member of ~~the~~The Hong Kong Institution of Engineers in more than one discipline, the person's membership is, for the purposes of subsections (1) and (6)(d), to be regarded as being only in the discipline designated by the Secretary for the appointment<sup>14</sup>.
- (3) A public officer is ineligible for an appointment under subsection (1).
- (4) A member of the appeal board panel is to be appointed for a term of 3 years and may be reappointed where each reappointment is for a term of 3 years.

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<sup>12</sup> Item 8(i)

<sup>13</sup> Item 8(ii)

<sup>14</sup> Item 8(iii)

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- (5) A member of the appeal board panel may, at any time, resign from his or her office by issuing a notice in writing to the Secretary.
  - (6) The Secretary may terminate the office of a member of the appeal board panel if the Secretary is satisfied that the member—
    - (a) has become a public officer;
    - (b) has become bankrupt or has entered into a voluntary arrangement within the meaning of section 2 of the Bankruptcy Ordinance (Cap. 6) with the member's creditors;
    - (c) is incapacitated by physical or mental illness;
    - (d) has ceased to be of the capacity by virtue of which the member was appointed; or
    - (e) is otherwise unable or unfit to perform the functions of a member of the appeal board panel.
  - (7) The Secretary must give notice in the Gazette of any appointment, reappointment, resignation or termination of office under this section.

## **25. Appeal board**

- (1) Within 21 days after receiving a notice of appeal delivered under section 23(4), the Secretary must appoint from among the members of the appeal board panel a District Cooling Services Appeal Board to hear the appeal.
- (2) An appeal board is to consist of 5 members—
  - (a) one of whom is the Chairperson of the board, who must be appointed from the category of members specified in section 24(1)(a); and

- (b) the remaining 4 members must be appointed from **all of** the 3 categories of members specified in section 24(1)(b), (c) and (d)<sup>15</sup>.
- (3) If a vacancy occurs in an appeal board before the hearing of the appeal begins, the Secretary must, as soon as reasonably practicable, make an appointment from among the members of the appeal board panel to fill the vacancy so that the board is composed in accordance with subsection (2).
- (4) The members of an appeal board may be paid out of the general revenue any remuneration the Financial Secretary determines.

## **26. Proceedings of appeal board**

- (1) The quorum for a meeting of an appeal board is 3 members, one of whom must be the Chairperson of the board.
- (2) A question before an appeal board must be determined by a majority of those members present at the meeting at which the question is to be determined.
- (3) If there is an equality of votes in respect of a question before an appeal board, the Chairperson of the board has a casting vote in addition to his or her original vote.
- (4) An appeal board may perform any of its functions, and its proceedings are valid, despite—
- (a) subject to section 28, a vacancy in the board; or
  - (b) a defect in the appointment or qualification of a person purporting to be a member of the board.
- (5) In performing their functions under this Ordinance, the members of an appeal board have the same privileges and

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<sup>15</sup> Item 9



immunities as a judge of the Court of First Instance has in civil proceedings in that Court.

- (6) A person appearing before an appeal board as a witness, a party to an appeal or a representative of a party to an appeal is entitled to the same privileges and immunities as he or she would have in civil proceedings in the Court of First Instance.
- (7) Subject to this Part, an appeal board may determine its own procedure.
- (8) In this section—  
*meeting* (會議) includes a meeting to hear an appeal.

## **27. Hearing of appeal**

- (1) The Chairperson of an appeal board must notify the appellant and the Director of the date, time and place of the hearing of the appeal at least 14 days before the hearing.
- (2) At the hearing of an appeal—
  - (a) the appellant may be represented by—
    - (i) a barrister or solicitor; or
    - (ii) (if the appellant is a body corporate) an individual authorized by the appellant; and
  - (b) the Director may be represented by—
    - (i) a barrister or solicitor; or
    - (ii) a public officer.
- (3) An appeal board may engage a barrister or solicitor to attend the hearing of an appeal to advise it on any matter relating to the appeal.
- (4) The hearing of an appeal must be open to the public unless the appeal board determines that there is a good reason for it to be held in camera.

- (5) An appeal board may, by a notice signed by the Chairperson of the board and issued to a person—
  - (a) direct the person to attend before the board and to give evidence; or
  - (b) direct the person to produce documents.
- (6) No person to whom a direction is given under subsection (5) is required to give any evidence, or produce any document, that tends to incriminate the person.
- (7) A person who fails to comply with a direction under subsection (5) commits an offence and is liable on conviction to a fine at level 3.

**28. Reappointment of appeal board in case of certain vacancies**

- (1) Subsection (2) applies if, after the hearing of an appeal has begun, a vacancy occurs in an appeal board and—
  - (a) as a result, fewer than 3 members of the board remain in office; or
  - (b) the vacancy is that of the Chairperson of the board.
- (2) On the occurrence of the vacancy—
  - (a) the appeal board is dissolved; and
  - (b) the Secretary must appoint an appeal board under section 25(1) as if the Secretary had received, on the date on which the vacancy occurred, the notice of appeal delivered under section 23(4) in relation to the subject matter of the appeal again.

**29. Appeal board may authorize inspection of installation etc.**

- (1) If an appeal board reasonably believes that an installation or facility is relevant to the determination of an appeal, the board may, by an authorization signed by the Chairperson of the board—

- (a) authorize a person to inspect the installation or facility; and
  - (b) authorize the person to enter a building, except a part of the building that is for residential use, for the purposes of the inspection.
- (2) A person who obstructs a person authorized under subsection (1) in the inspection commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

### **30. Determination of appeal**

- (1) An appeal board may—
- (a) confirm, vary or revoke the decision or direction appealed against; or
  - (b) substitute its own decision or direction for the decision or direction appealed against.
- (2) An appeal board may make any order that it thinks fit with regard to the payment of—
- (a) costs and expenses of the appeal proceedings; or
  - (b) costs and expenses of the Director or any other person in the proceedings.
- (3) The costs and expenses ordered to be paid under subsection (2) are recoverable as a civil debt.
- (4) An appeal board must issue to the appellant and the Director a notice of its determination and the reasons for the determination.
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## Part 6

### Miscellaneous Matters

#### 31. Presumptions and evidence in writing

- (1) In any civil proceedings for the recovery of an unpaid charge or fee payable under this Ordinance, a document to which this subsection applies is admissible in evidence on production without further proof.
- (2) Subsection (1) applies to a document that—
  - (a) purports to be signed by the Director or an authorized officer; and
  - (b) states—
    - (i) the name of the person liable to pay the charge or fee;
    - (ii) the amount of the charge or fee;
    - (iii) the nature and other particulars of the charge or fee; and
    - (iv) that the charge or fee remains unpaid.
- (3) If a document is admitted in evidence under subsection (1)—
  - (a) the court must, in the absence of evidence to the contrary, presume—
    - (i) that it was signed by the Director or the authorized officer as stated in the document;
    - (ii) that the facts referred to in subsection (2)(b) as stated in the document are true; and
    - (iii) that the record of the facts stated in the document was made and compiled at the time stated in it; and

- (b) the document is evidence of all other matters contained in it.
- (4) If a document is admitted in evidence under subsection (1), the court may, if it thinks fit, on its own motion or on the application of a party to the proceedings—
  - (a) summon the person who signed the document; and
  - (b) examine that person as to the subject matter of the document.

**32. Delegation by Director**

The Director may, in writing, delegate any of his or her functions under this Ordinance to a public officer attached to the Electrical and Mechanical Services Department.

**33. Director may specify forms**

- (1) The Director may specify a form to be used for the purposes of any provision of this Ordinance.
- (2) If the Director specifies a form under subsection (1), the Director must make copies of the form available—
  - (a) at the office of the Electrical and Mechanical Services Department during normal office hours; and
  - (b) in any other manner the Director thinks fit.

**34. Secretary may amend Schedules**

The Secretary may, by notice published in the Gazette, amend Schedule 1 or 2.

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**Schedule 1**

[ss. 3, ~~10~~ &  
34<sup>16</sup>]

**District Cooling System in relation to which this  
Ordinance Applies**

1. Kai Tak District Cooling System, which serves the area that is delineated and edged red on Plan No. KM9180 signed by the Director of Lands on 12 August 2014 and deposited in the office of the Director of Electrical and Mechanical Services.
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<sup>16</sup> Item 10

**Schedule 2**

[ss. 10 &amp; 34]

**Charges for District Cooling Services****1. Calculation of charges for district cooling services**

- (1) This Schedule applies to the calculation of the following charges for a district cooling system—
- (a) capacity charge and capacity overrun charge (see section 2 of this Schedule);
  - (b) consumption charge (see section 3 of this Schedule);
  - (c) surcharge and further surcharge (see section 4 of this Schedule).
- (2) Section 5 of this Schedule sets out the following rates that are applicable to a building to which district cooling services are provided by ~~it~~—a district cooling system referred to in that section<sup>17</sup>—
- (a) capacity charge rate;
  - (b) consumption charge rate.

**2. Capacity charge and capacity overrun charge**

- (1) The amount of capacity charge payable under section 10(1)(a) in respect of a building for a month is to be calculated according to the following formula—

$$\text{capacity charge} = C \times CR$$

where—

C = contract cooling capacity of the building; and

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<sup>17</sup> Item 11

CR = capacity charge rate applicable to the building.

- (2) The amount of capacity overrun charge, if payable under section 10(1)(b) in respect of a building for a month, is to be calculated according to the following formula—

$$\text{capacity overrun charge} = (AC - C) \times CR \times 110\%$$

where—

AC = highest actual cooling capacity of the building in the month;

C = contract cooling capacity of the building; and

CR = capacity charge rate applicable to the building.

- (3) If district cooling services are provided to a building in a month for a period of less than 1 month, the amount of capacity charge, and that of any capacity overrun charge, payable for that month are to be calculated on a pro-rata basis according to the number of days for which the services are provided to the building in that month.

### 3. Consumption charge

The amount of consumption charge payable under section 10(1)(c) in respect of a building for a month is to be calculated according to the following formula—

$$\text{consumption charge} = AE \times ER$$

where—

AE = actual cooling energy consumption of the building in the month; and

ER = consumption charge rate applicable to the building.



**4. Surcharge and further surcharge**

- (1) The amount of surcharge, if payable under section 10(2)(a) in respect of a primary charge or fee, is to be calculated according to the following formula—

$$\text{surcharge} = (\text{PC} - \text{PCP}) \times 5\%$$

where—

PC = the primary charge or fee that is payable as at the due date; and

PCP = the part of the primary charge or fee that has been paid, if any, as at the end of the due date.

- (2) The amount of further surcharge, if payable under section 10(2)(b) in respect of a primary charge, fee or surcharge, is to be calculated according to the following formula—

$$\text{further surcharge} = (\text{PCS} - \text{PCSP}) \times 10\%$$

where—

PCS = the primary charge, fee or surcharge that is payable as at the due date; and

PCSP = the part of the primary charge, fee or surcharge that has been paid, if any, as at the expiry of the period of 6 months beginning on the day after the due date.

**5. Capacity charge rate and consumption charge rate**

- (1) For a building ~~in~~ to which district cooling services are provided by a district cooling system specified in column 1 of the following table<sup>18</sup>—

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<sup>18</sup> Item 12

- (a) the capacity charge rate applicable is specified in paragraph (a) in column 2 opposite that system; and
- (b) the consumption charge rate applicable is specified in paragraph (b) in column 2 opposite that system.

**Table**

Column 1	Column 2
District cooling system	Rate of charge
1. Kai Tak District Cooling System	<p>(a) <b>Capacity charge rate (CR)</b>—</p> <ul style="list-style-type: none"> <li>(i) for the initial period—  <math display="block">CR = \\$112.11 \text{ per kilowatt refrigeration (kW}_r\text{);}</math> </li> <li>(ii) for each subject period—  <math display="block">CR = CR_{n-1} \times (1 + CCPI_r)</math> <p>where—</p> <p><math>CR_{n-1}</math> = capacity charge rate applicable immediately before the subject period; and</p> <p><math>CCPI_r</math> = rate of change in CCPI applicable for the subject period.</p> </li> </ul> <p>(b) <b>Consumption charge rate (ER)</b>—</p> <ul style="list-style-type: none"> <li>(i) for the initial period—  <math display="block">ER = \\$0.19 \text{ per kilowatt-hour refrigeration (kWrh);}</math> </li> </ul>

Column 1

District  
cooling  
system

Column 2

Rate of charge

(ii) for each subject period—

$$ER = ER_{n-1} \times (1 + ET_r)$$

where—

$ER_{n-1}$  = consumption charge rate applicable immediately before the subject period; and

$ET_r$  = rate of change in electricity tariff applicable for the subject period.

(2) In this section—

***initial period*** (初始期間), for the Kai Tak District Cooling System, means the period beginning on the commencement date of this Ordinance up to and including the first 31 March that follows;

***rate of change in CCPI*** (物價指數變動率), in relation to a subject period beginning in a year, means the annual rate of change in the Composite Consumer Price Index recorded for the preceding year, after removing the effects of all one-off relief measures of the Government, if any, as compiled and published by the Commissioner for Census and Statistics;

***rate of change in electricity tariff*** (電費變動率), in relation to a subject period beginning in a year, means the annual rate of change in electricity tariff applied to the year, as announced by the supplier of electricity to the district cooling system and publicized through the Internet by the Director;

***subject period*** (收費計算期), for the Kai Tak District Cooling System, means any 12-month period beginning on 1 April of a year up to and including 31 March in the following year that is after the initial period.

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